



**April 29, 2005**

**Noteworthy:**

- [Dem judge protests smearing of GOP nominee; By George Week, \*Detroit News\*, 4/28/05](#)
- [Meet the Filibuster Flip-Floppers, \*Human Events\*; 4/29/05](#)

**True or False:**

Yesterday at the Jefferson Memorial, Senate Democratic Leader Harry Reid said that the President's filibustered judicial nominees "have had an up-or-down vote."

It's true that Senator Reid said it, which is unbelievable for him to assert, as he and former Senator Daschle led the opposition to the nominees getting up-or-down votes.

But the statement is false.

None of the 10 judicial nominees that have been filibustered by Senate Democrats has had the courtesy of an up-or-down vote. Not one. There have been procedural votes – votes that require 60 aye votes to prevail -- as to whether or not the nominees deserve an up-or-down vote. And on each of these votes a majority of senators has said yes they deserve such a vote. But they never got one.

**Dem judge protests smearing of GOP nominee  
By George Week, *Detroit News*, 4/28/05**

Michigan Court of Appeals Judge Stephen Borrello of Saginaw, a onetime Democratic activist and former attorney for labor unions, is not about to support a corporate stooge for appointment to a federal judgeship.

Borrello in 2003 was the first appellate judge appointed by new Gov. Jennifer Granholm. The two had served as co-chairs of Sen. Carl Levin's 1998 selection committee on candidates for the federal benches in the Eastern District of Michigan.

So it is worthy of note that the ex-labor litigator and ex-chairman of the Saginaw County

Democratic Committee has sharply criticized those who have "defamed" a judge who is among three of President George W. Bush's judicial nominees from Michigan whose confirmations are being blocked by Levin and Sen. Debbie Stabenow.

In an April 18 e-mail to the liberal People for American Way organization, Borrello protested that on its Web site "you seek to portray (Michigan Court of Appeals) Judge Richard Griffin as an anti-union, anti-worker jurist.... Nothing could be further from the truth."

Borrello said, "By deliberately placing Judge Griffin along side jurists with whom the general public may have legitimate questions, you have both defamed him and made it abundantly clear that your organization is nothing more than a shill for the Democratic Party."

Griffin, of Traverse City; Court Appeals Judge Henry Saad of Birmingham; and U.S. District Judge David McKeague of Lansing are Bush nominees for the Sixth U.S Court of Appeals in Cincinnati. The Michigan Three are among seven nominees who have been blocked by Democrats from getting an up-or-down floor vote and are at the center of a showdown over whether ruling Republicans will change the parliamentary rules to ban judicial filibusters.

In Michigan TV ads financed by Democratic-friendly organizations, the three are painted by one as "radical" and as "corporate stooges" by another.

In truth, they are being blocked not so much over ideology as senatorial prerogatives and payback because then-Sen. Spencer Abraham blocked two of former President Bill Clinton's nominees to the Sixth Circuit.

The Associated Press on Monday reported that Senate Democratic Leader Harry Reid had been quietly talking with Majority Leader Bill Frist about confirming Griffin and McKeague in exchange for Republicans dropping Saad in favor of an alternative favored by Levin and Stabenow -- but only as part of a broader compromise in which Republicans would abandon threats to ban judicial filibusters.

That was understandably rejected Tuesday by Frist and the White House, which said "Senate Democrats need to stop playing politics and give all judicial nominees an up or down vote."

On Wednesday, Levin and Stabenow issued this terse statement: "It appears that Sen. Frist has rejected the option of a bipartisan compromise. We continue to support a bipartisan resolution that includes the Sixth Circuit Court."

What can be more bipartisan than letting both parties vote on the floor? I focused on Griffin because of the forceful way a Democratic judge came to the defense of a Republican judge who is being smeared when he is a pawn in a battle that has little to do with his qualifications.

Furthermore, I found interesting the assertion in Borrello's e-mail that "I find nothing 'American' about the fact that neither of my two senators have taken the time to even speak to Judge Griffin, or anyone else that I am aware of, concerning his nomination."

But Borrello said Wednesday he was "dead wrong" on that point. He also said that without Griffin's advance knowledge he wrote to the Senate Judiciary Committee to support the nomination "because this is a decent guy.... He calls them as he sees them."

### **Meet the Filibuster Flip-Floppers**

#### **HUMAN EVENTS**

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When President Bill Clinton was nominating judges, Democrats frequently insisted all nominees were entitled to an up-or-down vote on the Senate floor.

Now they falsely argue that filibustering judicial nominees is a thoroughly constitutional practice rooted in Senate tradition.

Between 1789, when the Constitution was ratified, and March 6, 2003, when 44 Senate Democrats blocked "cloture," and thus a final floor vote, on the appellate court nomination of Miguel Estrada, no federal judicial nominee with majority support in the Senate was ever blocked by a filibuster.

Since then, Democrats have blocked nine other nominees put forth by President Bush, including seven currently waiting to be confirmed.

Here are the duplicitous remarks of six Democratic senators who have flip-flopped on judicial filibusters.

Sen. Barbara Boxer (Calif.)

Once Supported Up-or-Down Vote:

"According to the U.S. Constitution, the President nominates, and the Senate shall provide advice and consent. It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor."  
(Congressional Record, May 14, 1997)

Now Opposes Up-or-Down Vote:

"So we're saying we think you ought to get nine votes over the 51 required. That isn't too much to ask for such a super important position. There ought to be a super vote. Don't you think so?"  
(Remarks at MoveOn.org rally in Washington, March 16, 2005)

Sen. Dick Durbin (Ill.)

Once Supported Up-or-Down Vote:

"If, after 150 days languishing in a committee there is no report on an individual, the name should come to the floor. If, after 150 days languishing on the executive calendar that name has not been called for a vote, it should be. Vote the person up or down. They are qualified or they are not." (Congressional Record, Sept. 28, 1998)

Now Opposes Up-or-Down Vote:

"We have to have the process where the rules are respected, where we have checks and balances in our government, and where people seeking lifetime appointments must demonstrate not only honesty and competency but the fact that they are in tune with the values and the needs of the American people. Unfortunately, in the case of 10 judges, many of us believe the nominees sent by the White House do not meet that test." (Congressional Record, April 20, 2005)

Sen. Dianne Feinstein (Calif.)

Once Supported Up-or-Down Vote:

"A nominee is entitled to a vote. Vote them up; vote them down. . . . It is our job to confirm these judges. If we don't like them, we can vote against them. That is the honest thing to do. If there are things in their background, in their abilities that don't pass muster, vote no." (Congressional Record, Sept. 16, 1999)

Now Opposes Up-or-Down Vote:

"[O]ut of 205 judges, we haven't confirmed 10 submitted by the President and have chosen to filibuster those, the Republicans want to break the filibuster rule. And I think that's a big problem." (CNN's "Late Edition With Wolf Blitzer," April 17, 2005)

Sen. Teddy Kennedy (Mass.)

Once Supported Up-or-Down Vote:

"The Constitution is clear that only individuals acceptable to both the President and the Senate should be confirmed. The President and the Senate do not always agree. But we should resolve these disagreements by voting on these nominees--yes or no." (Congressional Record, Jan. 28, 1998)

Now Opposes Up-or-Down Vote:

"But what has not ended is the resolution and the determination of the members of the United States Senate to continue to resist any Neanderthal that is nominated by this President of the United States for any . . . federal court in the United States." (CNN's "Inside Politics," Nov. 14, 2003)

Sen. Patrick Leahy (Vt.)

Once Supported Up-or-Down Vote:

"I . . . do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41. . . . [D]uring the Republican administrations I rarely ever voted against a nomination by either President Reagan or President Bush. There were a couple I did. I also took the floor on occasion to oppose filibusters to hold them up and believe that we should have a vote up or down." (Congressional Record, Sept. 16, 1999)

Now Opposes Up-or-Down Vote:

"If you remove the checks and balances so that you can nominate judges who will be basically an arm of one element of the Republican Party, then you have taken a giant leap toward an unfettered executive controlling all three branches of the federal government. . . . It will not only demean the Senate . . . but it will destroy the comity on which it depends." (Congressional Record, April 22, 2005)

Sen. Chuck Schumer (N.Y.)

Once Supported Up-or-Down Vote:

"I also plead with my colleagues to move judges with alacrity--vote them up or down. But this delay makes a mockery of the Constitution, makes a mockery of the fact that we are here working, and makes a mockery of the lives of very sincere people who have put themselves forward to be judges and then they hang out there in limbo." (Congressional Record, March 7, 2000)

Now Opposes Up-or-Down Vote:

"We will invoke every rule in the Senate that we can, without standing in the way of vitally needed programs, to show the people who put it in power that they cannot just by fiat undo 200 years of American history." (Fox News' "Special Report," April 21, 2005)